HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 16469 OF 2005

DATED: 31.8.2006

Between:

Girreddy Suryananayana Reddy and others

… Petitioners

and

The Irrigation and Command Area Development Department, represented by Principal Secretary and others

… Respondents

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.16469 OF 2005

ORAL ORDER:

Heard the learned counsel for the petitioners and the learned Government Pleaders for Land Acquisition and Irrigation, for the respondents 1 to 8. Perused the averments in the affidavit accompanying the writ petition and the counter affidavits and additional counter affidavits filed on behalf of the respondents.

The writ petition is filed seeking a direction as follows:

> *"declaring the action of the respondents in seeking to acquire agricultural lands belonging to petitioners in an extent of Ac.7.88 Cts., Sy.Nos.191 and 198, situated in Jaggampeta Village and Mandal, East Godavari District, by issuing notification under Section 4 (1) of the Land Acquisition Act, issued by respondents 5 and 6 published in Eanadu Telugu Daily Newspaper dated 3.6.2005 for the purpose of digging canal for the Pushkaram Lift Irrigation Project, as highly arbitrary, illegal, unjust, malafide, amounting to colourable exercise of power, violative of the Fundamental and Constitutional Rights guaranteed under Articles 14, 21 and*

300-A of the Constitution of India and violative of the principles of natural justice and issue a consequential direction to the respondents to dig the canal as was planned earlier and as mentioned in the plan filed herewith as option No.A and not to dig the canal as is now planned, which is shown in the said plan as option No.C or in the alternative, to dig the canal as shown in the said plan as option No.B and pass such other order or orders as are deemed fit and proper in the circumstances of the case."

According to the petitioners, for conserving about 2,500 TMC of waters of river Godavari, which is normally let out to the sea and for utilizing such water for irrigation in East Godavari District, a Pushkaram Lift Irrigation Project was conceived for irrigating 1.8 lakh acres of agricultural land in the District. For this purpose, a canal was proposed from Purushothamapatnam village at the head of the Godavari bend near Rajahmundry, to Tuni, a distance of 95 KMs. The canal was to be of a width of 120 Mtrs. For that purpose, tenders were called for execution of the work. The 9th respondent-firm was identified as the agency for executing the work on its bid being found competitive.

The petitioners have also pleaded that the 9th respondent had initially prepared a contour plan insofar as Jaggampeta village is concerned, under which certain lands were to be affected including the lands of one V.V.Satyanarayana Raju, to an extent of Ac.5.00 apart from a few other institutions including a Government Hospital. According to the petitioners,

this alignment is more advantageous to the State as there are no structures or bore-wells, which would be affected by acquisition of land and would save/conserve the expenditure from the exchequer.

According to the petitioners, the 9th respondent prepared another contour plan, which the petitioners describe in the writ petition as 'Option-B'. According to the petitioners, the 'B' option was also eschewed by the 9th respondent and he came with a third option (Option-C) under which the lands of the petitioners would be affected; the first petitioner's to an increased extent than in the 1st option; and the lands of the petitioners 2 and 3 for the first time. Under the 'C' option, the lands of V.V.S. Raju would not come up for acquisition. According to the petitioners, with a view to benefiting V.V. Satyanarayana Raju and to exclude his lands, the third alternative was adopted by the 9th respondent; this was accepted by the State and the other official respondents and land acquisition notification issued for acquisition of the lands of the petitioners and others, which the petitioners assert constitutes an arbitrary and irrational exercise of the power of eminent domain.

On behalf of the respondents 2 and 3, a counter has been filed by the Executive Engineer, ISLMC Division, Dowlaiswaram, East Godavari District. The answering respondent states that after the estimates were prepared based on the tentative alignment for fixing the agencies by the Irrigation

authorities and subsequent to entering into an agreement with the 9th respondent for execution of the works, the 9th respondent conducted a detailed investigation and had submitted proposals for finalization of the proposed alignment to the Chief Engineer, Central Designs Organization, Hyderabad. The Chief Engineer verified the design and the alignment as proposed by the 9th respondent and concluded that the pipeline erected by the Visakha Industrial Water Supply Company in Sy.Nos.184 and 192 and a Primary Health Centre Building in Sy.Nos.196/1 were falling within the contour of the alignment proposed by the 9th respondent. Therefore, and in order to avoid damage to the permanent water supply pipeline to Visakhapatnam from river Godavari and to avoid damage to the Primary Health Centre, the Chief Engineer changed the alignment and approved the revised alignment proposed by the 9th respondent, vide his letter dated 10.6.2005. The counter affidavit clearly and categorically denies each and every allegation of the petitioners that the change of alignment was actuated by extraneous considerations i.e. of saving the lands of V.V. Satyanarayana Raju or at the instance of the 9th respondent. Technical feasibility and administrative requirements were the sole basis for the finalization of the alignment, is the assertion in this counter affidavit.

The answering respondent further states that having regard to the

urgency of executing the canal work, in view of the fact that year after year Godavari river waters are flowing into the sea without being conserved for the irrigational benefit of the lands in the District, the urgency clause was invoked and the acquisition taken up.

In view of the assertions in the counter affidavit which remain unrebutted and in view of the petitioners failing to establish the allegations of malafides and irrelevant consideration by the respondents and in further view of the fact that determination of the alignment of an irrigation project is essentially a matter within the spectrum of discretion of the State executive agencies/the Government and not normally within the province of this court in exercise of the power of judicial review, this court discerns no justification for interference and for issuing a Mandamus as sought.

There are no merits. The writ petition is dismissed. No order as to costs.

GODA RAGHURAM, J

Date: 31.8.2006
cvm